



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

November 24, 1999
AO-99-18

Sharon A. Brotherton
Treasurer
Town of Douglas
29 Depot Street
Douglas, MA 01516

Re: Distribution of information to voters

Dear Ms. Brotherton:

This letter is in response to your request for an opinion regarding the use of public funds to pay for the distribution of information to voters regarding a local ballot question.

You have stated that the Douglas School Committee and the Douglas School Building Committee printed a flyer regarding a proposed school construction project. You have provided a copy of the flyer, which contains the following sections: (1) "The Issue: School Overcrowding," listing enrollment capacity and actual and projected enrollment; (2) "Work Done to Date"; (3) a description of the project, including drawings of the proposed high school and elementary school addition; and (4) a summary of the cost of the project and "the cost of doing nothing." The first page of the flyer contains a reminder that the special town meeting and town election on the issue will take place on November 15 and November 30, 1999, respectively.

You have received a check issued by the Town Accountant, authorized by the Town Administrator, charging the Selectmen's expense account for a newspaper insert. The check would pay a \$900 invoice from the Douglas Herald for inserting the flyer in the October/November issue of the Herald. Certain town residents have asked you if the town may appropriately make the expenditure.

In addition, you have stated that the flyer was copied and distributed to Town residents by the School Building Committee. The town has paid \$220 for copying and \$325.83 for mailing of the flyers. The flyers were mailed to residents using the Town's bulk mail permit.

Questions

- (1) May the Town pay the \$900 for inserting the flyer in the Douglas Herald?
- (2) Was it appropriate for the Town to have paid the \$545.83 for distribution of the flyer to residents using the Town's bulk mail permit? If not, what should be done?¹

Answers

- (1) No.
- (2) No. Private funds, e.g., funds raised by a ballot question committee, should have been used to produce and distribute the flyer. The treasurer or financial officer of the School Department should file a form with the Town Clerk disclosing the expenditure. In addition, the school department should be reimbursed for the costs of producing and distributing the flyer.

Discussion

In Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court concluded that the City of Boston could not appropriate funds, or use funds previously appropriated for other purposes, to influence a ballot question. The court stated that "the Legislature may decide, as it has, that fairness in the election process is best achieved by a direction that political subdivisions of the State maintain a 'hands off' policy." 376 Mass. at 195. The court also noted that the campaign finance law [M.G.L. c.55] demonstrates an intent "to assure fairness of elections and the appearance of fairness in the electoral process" and that the law should be interpreted as prohibiting the use of public funds "to advocate a position which certain taxpayers oppose." 376 Mass. at 193-195.

In addition, the Secretary of the Commonwealth's Election Division has noted in a joint memorandum issued with OCPF in March 1996 that the Home Rule Amendment of the Massachusetts Constitution prohibits municipalities from producing "informational" material regarding a ballot question without legislative authority.² Therefore, even if voter information commenting on the substance of a ballot question is intended to be objective and factual (it is "informational" rather than "advocacy"), it may not be produced or distributed using public resources.

¹ This office does not normally issue advisory opinions to address actions that have already occurred. In this instance, however, because your questions relate not only to the payments already made, but also to a requested payment not yet made, it is appropriate to issue an advisory opinion regarding all payments.

² Only four municipalities have authority to distribute informational material to voters regarding local ballot questions: Newton (ch. 274 of the Acts of 1987), Cambridge (ch. 630 of the Acts of 1989), Sudbury (ch. 180 of the Acts of 1996) and Burlington (ch. 89 of the Acts of 1998). In response to the legitimate concerns of many cities and towns, however, OCPF has sponsored legislation that would authorize any municipality, at local option, to distribute similar informational materials. See House 1722.

This office has stated that if public resources are used to distribute a flyer summarizing a warrant article pending before town meeting, the flyer should not refer to a subsequent town election in which there will be a question on the ballot regarding the same issue. See page 4 of IB-91-01 (a copy is enclosed). "Public resources" include, but are not limited to: staff time, office space, stationery and office supplies, office equipment such as telephones, copier and fax machines and computers, as well the use of a state, county or municipal seal. See IB-91-01. Even the occasional, minor use of public resources for a political purpose is inconsistent with state law and should be avoided. Therefore, the town should not pay the \$900 cost of inserting the flyer into the Douglas Herald.

The campaign finance law requires disclosure of such expenditures made to influence an election. Specifically, section 22A of M.G.L. c. 55 states that the treasurer or financial officer of any governmental unit "which has given, paid, expended or contributed . . . any money or any valuable thing in order to influence or affect the vote on any question submitted to the voters . . . shall file reports with the clerk of such city or town" disclosing the expenditure. I have enclosed a CPF Form 22A, which, in accordance with section 22A and M-95-06 (a copy is enclosed) should be completed by the appropriate governmental treasurer or fiscal officer and filed with the town clerk in accordance with section 22A, to disclose expenditures by the School Committee and School Building Committee.³

Where public funds are spent to influence an election, the office consistently recommends that restitution of public funds take place. Restitution may be made by an individual, association (e.g., a PTO) or ballot question committee. If a group of persons decides to *raise* funds for this purpose they must first organize a ballot question committee, which would have to register with the Town Clerk and file campaign finance reports reflecting all funds raised and spent. The committee, individual or association, in addition to reimbursing the Town for the amount spent for the mailing, could also pay the \$900 invoice for the newspaper insert.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter and your conversations with OCPF staff. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director

³ In calculating the costs to be reflected on the form the School Department should include all costs, e.g., the cost of using paid staff to produce and distribute the flyer, supplies and postage used, and the value of the Town's bulk mail permit. The use of the permit was something of value provided by the town to assist the School Committee and School Building Committee in their efforts to pass the ballot question, and should therefore be included on the form as an in-kind contribution. See AO-96-24 (stating that the cost of obtaining the permit in 1996 was \$170).

Sharon A. Brotherton

Nov. 24, 1999

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Cc: Betty Ann McCallum, Town Clerk

Concetta Verge, Superintendent of Schools

Norman MacNeill, Town Administrator